

CP-38 Commission Position on Disclosure of Affiliated Business Arrangements and Conflicts of Interest (4-5-2011)

This statement supplements Rule E-46 Affiliated Business Arrangements. §12-61-113.2, C.R.S. *Affiliated Business Arrangements* was enacted in Colorado to provide transparency, accountability, and consumer protection through disclosure and consistency concerning affiliated business arrangements. Affiliated business arrangements have also been regulated for many years by the Real Estate Settlement Procedures Act (RESPA). RESPA was precipitated by significant reforms identified by Congress as necessary to ensure that consumers did not pay disproportionately high settlement costs as the result of certain deleterious business practices by settlement service providers. RESPA is applicable to any residential mortgage transaction involving a federally related mortgage loan. However, Colorado law requires disclosure of affiliated business arrangements to consumers even if the transaction does not involve a federally related residential mortgage loan.

Colorado law C.R.S. 12-61-113.2(1)(a) defines an “affiliated business arrangement” as an arrangement in which:

“A provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services;”

and the provider directly or indirectly refers business to the other provider or affirmatively influences the selection of another provider of settlement services.

It is the Commission’s position that real estate brokers must disclose affiliated business arrangements to consumers in all transactions intended to result in the transfer of title from one party to another. RESPA requires that affiliated business arrangements be disclosed before or at the time a referral is made to a provider of settlement services. Colorado law requires a licensee to disclose any affiliated business arrangement when an offer to purchase real property is fully executed. In Colorado, the disclosure is required to be in writing, must be given to both agents and transaction brokers, must comply with RESPA and Colorado law, and must be made using the Federal RESPA disclosure form. Colorado law requires real estate brokers to disclose their affiliated business arrangements to all parties to the real estate transaction and all parties are expected to sign the disclosure form. The Commission recommends that real estate brokers disclose their affiliated business arrangements to the party with whom they are working early in their relationship, i.e. at the time brokerage relationships are disclosed or when the listing contract or buyer broker agreement is negotiated. In those transactions where the broker does not deal with another party until the time of contracting written disclosure should be made to all parties at the time the purchase contract is fully executed.

Additionally, real estate brokers are required to make certain disclosures to the Division of Real Estate regarding their affiliated business arrangements. Colorado law requires every licensee to

disclose to the Commission when they enter into or change an affiliated business arrangement. All affiliated business arrangements to which the licensee is a party must be disclosed. Disclosure is required at the time of a new application for licensure or at the time of activation of an inactive license. The disclosure must include the physical location of the affiliated business. Employing brokers are required to disclose the names of all affiliated business arrangements to which the employing broker is a party on an annual basis, at the least. The disclosure must include the physical location of the affiliated businesses. The Commission has determined that these disclosures shall be made electronically through the Division of Real Estate's website at www.dora.state.co.us/pls/real/AFB_Web.Logon?p_div=REC.

It is the Commission's position that Rule E-25 *Continuing duty to disclose conflict of interest and license status*, applies to all licensees including real estate brokers who perform licensed property management services and are affiliated with businesses or vendors that provide services applicable to lease transactions. For example, a real estate broker acting on behalf of a landlord is required to disclose to the landlord that the real estate broker has partial ownership of the maintenance company that the real estate broker utilizes for the landlord's property repairs. The Commission strongly recommends that this type of information be disclosed to the principal early in the business relationship, i.e. at the time brokerage relationships are disclosed or when the listing contract is negotiated. Additionally, this disclosure should be made in writing.